

S.B.CIVIL MISC. APPEAL NO.1497/2006
(Oriental Insurance Company Ltd. Vs. Meera & Ors.)

DATED: 03.11.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Dinesh Mehta for the appellant

Mr.Vijay Bishnoi for the respondents Nos.1 to 8 (caveator)

For quantification of compensation on account of accidental death of Khyali Ram, about 42 years in age and said to be earning by preparation and selling of sweetmeats, confectionery etc., the Tribunal estimated his monthly income at Rs.4,500/- and doubled the same while providing for future prospects; then, with deduction of one-third on his personal expenditure took loss of contribution for the wife, children and parents at Rs.6,000/- per month; and then, with application of multiplier of 11 assessed pecuniary loss at Rs.7,92,000/-. Thereafter, the Tribunal deducted Rs.50,000/- received under 'No Fault Liability' and in the reminder of Rs.7,42,000/- added Rs.16,000/-, comprising of Rs.15,000/- to the wife of the deceased for loss of consortium and Rs.1,000/- for litigation expenses; and thus found entitled the claimants to an amount of Rs.7,68,000/- and allowed interest at the rate of 6% per annum from the date of filing of claim application with the stipulation that for non-payment within two months, interest

shall be payable at 9% per annum. The insurer of the vehicle involved in the accident has questioned the aforesaid award dated 28.06.2006 made by the Motor Accidents Claims Tribunal, Ratangarh in Claim Case No.17/2005 being highly excessive.

On the matter being taken up for motion hearing, Mr.Vijay Bishnoi learned counsel has put in appearance in caveat for the claimant-respondents Nos.1 to 8 and in all fairness conceded that the award on its quantification of compensation stands on a higher side and submitted that the same may be re-stated while allowing compensation in the sum of Rs.6,55,000/- with interest at the rate of 6% per annum from the date of filing of claim application. Learned counsel Mr.Dinesh Mehta appearing for the appellant-insurer after taking instructions has agreed to the proposition put forward by Mr.Bishnoi and submitted that the award may be suitably modified.

Having examined the impugned award, this Court is satisfied that the figure arrived at by the parties in consensus remains that of just compensation admissible in this case and the award deserves to be modified accordingly; particularly when the calculation is taken up with regard to the facts that the deceased was said to be engaged in a business, was about 42 years in age but the family comprised of nine

members including himself. Even if the proposition of doubling the estimated income in the name of future prospects in the present case is not countenanced, the fact remains that deceased had a comparatively larger family of nine persons to support and, obviously, the element of personal expenditure cannot be taken at one-third as adopted by the Tribunal; and by application of unit system of calculation, such deduction would stand at a lower figure. Then, application of the multiplier of 11 by the Tribunal is obviously on the lower side and a multiplier of 15 could reasonably be provided in this case. The amount towards non-pecuniary loss at Rs.15,000/- also stands on the lower side and there appears no reason to deprive other claimants of reasonable, even if token, amount towards non-pecuniary loss.

Therefore, the amount of Rs.6,55,000/- agreed to by the parties appears to be that of just compensation and after deducting Rs.50,000/- already paid towards No Fault Liability, the claimants shall be entitled for an amount of Rs.6,05,000/- with interest at the rate of 6% per annum from the date of filing of claim application. Stipulation regarding penal rate of interest at 9% per annum being obviously contrary to law cannot be countenanced.

Accordingly, this appeal succeeds to the extent indicated above and with the consent of parties, the award is modified and re-stated allowing compensation in the sum of Rs.6,55,000/- to the claimants who shall be entitled to the remaining amount of Rs.6,05,000/- with interest at the rate of 6% per annum from 20.01.2005, the date of filing of claim application.

The amount payable under the modified award shall be deposited by the insurer within 30 days from today with the Tribunal and the Tribunal shall carry out requisite apportionment and issue necessary orders for disbursement. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI),J.

MK